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document (EXH 51) appears to materially differ with Attachment 12.

#### SUMMARY

BellSouth has proposed the use of its negotiated measures with AT&T (Attachment 12) as its performance standards and measurements in this proceeding. In addition, BellSouth has proposed to use the statistical control process as a reporting format for ALECs' performance. AT&T and the intervenors argue that Attachment 12 is inadequate. AT&T and the intervenors have proffered the LCUG metrics as an alternative. The intervenors argue that the LCUG metrics are adequate in detecting discrimination and better structured compared to BellSouth's proposed SPC.

The FCC determined in the Ameritech Order that data on average installation intervals regarding the BOC's retail operations is critical in determining nondiscrimination. BellSouth has not provided such operational data in this proceeding; thus, BellSouth has not met this requirement.

#### RECOMMENDATION

BellSouth has developed performance standards and measurements. These performance standards and measurements are in the form of performance target intervals. However, the performance target intervals that BellSouth has established are not adequate to monitor post-entry nondiscriminatory performance for UNEs and OSS functions. Thus, staff recommends that BellSouth has not developed performance standards and measurements that are adequate to monitor nondiscriminatory provision of UNEs, resale services and access to OSS functions.

#### GUIDELINES

Staff believes that BellSouth should use the LCUG to pattern its performance standards and measurements in the interim. Staff believes that the LCUG is far from being comprehensive; however, the LCUG appears to be adequate in measuring and monitoring nondiscrimination in the interim. For future Section 271 applications, staff believes that BellSouth use mean provisioning intervals to determine nondiscriminatory performance. BellSouth should present comparable performance for both itself and the ALECs using at least six months of statistically valid commercial usage data, showing:

- (1) average installation intervals for resale;
- (2) average installation intervals for loops;

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- (3) comparative performance information for unbundled network elements;
- (4) service order accuracy and percent flow through;
- (5) held orders and provisioning accuracy;
- (6) bill quality and accuracy; and
- (7) repeat trouble reports for unbundled network elements.

In addition, BellSouth should provide performance measurements that are clearly defined, permit comparison with BellSouth's retail operations, and are sufficiently disaggregated to permit meaningful comparisons.

Regarding other concerns (i.e. transport trunks and advanced data services) expressed by some of the intervenors on the proposed LCUG, staff recommends that BellSouth and the intervenors resolve these pending issues as they are deemed necessary and adequate in demonstrating nondiscrimination.

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ISSUE 4: Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC? (Widell)

RECOMMENDATION: Yes. BellSouth has been providing such access to cable television providers under § 224, of the Communications Act of 1934 since 1978. The 1996 Act expanded the access to include telecommunication carriers with no changes to the requirement on the owners of the poles, conduits, and rights-of-way.

POSITION OF THE PARTIES

ACSI: ACSI and BellSouth have an interconnection agreement which includes the requirement for nondiscriminatory access but ACSI is currently a reseller and has no experience as to whether BellSouth is in compliance with the Act and applicable rules.

AT&T: BellSouth has not provided such access to AT&T and cannot demonstrate compliance with this checklist item until methods and procedures have been tested and implemented and it actually provides such access to competitors.

BST: Yes. BellSouth provides nondiscriminatory access to poles, ducts, conduits and rights-of-way to any ALEC by way of a standard agreement. To date, 13 ALECs have executed this agreement. Also, the functional availability of this access is proven by the fact that BellSouth has provided it to interexchange carriers, cable television and power companies for years.

FCCA: No. The testimony of individual carriers demonstrates that BellSouth has not actually provided nondiscriminatory access to these items as required by the Act.

FCTA: No. BellSouth has failed to meet its burden of demonstrating compliance with the Act and FCC's rules.

ICI: No. Although the BellSouth-Intermedia interconnection agreement provides for nondiscriminatory access to poles, ducts, and conduits, Intermedia has little, if any, experience with this matter.

MCI: No. BellSouth has not established time periods for providing access to poles, ducts, conduits, and rights-of-way, thus the

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process for obtaining such access is subject to abuse and BellSouth cannot show that such access is nondiscriminatory.

MFS/WorldCom: No. BellSouth has not provided nondiscriminatory access due to its failure to have methods and procedures in place that permit access to these items.

Sprint: No. BellSouth should provide competitors access to poles, ducts, conduits and rights-of-way. Such access should be nondiscriminatory. Prices should be cost-based. Terms and conditions should be set out in tariffs and contracts. Sprint/SMNI are unaware that BellSouth has, in fact, provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates. Agreements reviewed by Sprint/SMNI appear to contain a number of exculpatory clauses that would permit BellSouth to refuse access to these elements.

TCG: No. BellSouth has not met its burden of affirmatively demonstrating that it has provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC.

#### STAFF ANALYSIS:

##### INTERPRETATION OF THE ACT'S REQUIREMENTS

###### SECTION 271 REQUIREMENTS

Section 271 (c) (2) (B) (iii) requires nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

Section 224 (f) (1), as amended by § 703 of the 1996 ACT, states that "(a) utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."

Section 703 amended §224 by adding "or any telecommunications carrier" to both § 224 (a) (4) and § 224 (f) (1).

###### FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

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The FCC implemented the new § 703, by issuing FCC Order 96-327. This order revised the FCC rules to meet the new statutory requirements in the amended § 224 by adding "or any telecommunication carrier" to all rules that applied to cable television operators. The FCC did not specifically interpret the conditions set forth for checklist item 3, in § 271 (c) (2) (B) (iii). Also there was no mention of this checklist item in either the Ameritech order or the SBC order.

#### FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

The Commission did not specifically address nondiscriminatory access to poles, ducts, conduits, and rights-of-way in the arbitration orders, other than requiring that BellSouth allow ALECS to reserve capacity under the same time frames, terms and conditions it affords itself.

#### SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

Staff believes that § 271(c)(2)(B) in conjunction with § 224 requires BellSouth to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way to ALECs when requested. If no requests for access have been made, then BellSouth is required to demonstrate that it is capable of providing such access if it is ordered by an ALEC or cable television company.

#### STAFF DISCUSSION OF POSITIONS

There was very little testimony presented by the intervenors on this issue. Most of the witnesses did not address "access to poles, ducts, conduits, and rights-of-way" at all. However, eight of the nine intervenors stated in their briefs that BST had not provided nondiscriminatory access. Only three, AT&T, MCI, and Sprint, presented any argument as to why they took this position. Sprint's arguments were presented only in its brief. Sprint witness Closz did not address this issue in her direct testimony. Staff is not convinced by the positions of the other six intervenors since they offered no testimony to support their positions. Staff realizes that the burden of proof is on BST to demonstrate that it can provide the access if and when it is ordered by an ALEC; however, evidence offered by these six intervenors does not cite any specific problems for the Commission to consider when making a decision on this issue.

Sprint offers some reasoning for its "no" response on this issue. In addition to stating that BST should provide competitors

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nondiscriminatory access to poles, ducts, conduits and rights-of-way, which is the requirement of the Act, Sprint adds a requirement that prices should be tariffed and cost based. (BR p.6) Staff cannot find any reference to tariffs being required by the Act. Also BST's witness Scheye presented evidence stating that the prices for ALEC access were developed in accord with FCC accounting rules, which were developed to be cost based. (TR 419-21) These prices were not challenged by any party.

MCI also cited some basis for its position on this issue. MCI states that BST has not established time periods for providing access to poles, ducts, conduits, and rights-of-way, thus the process for obtaining such access is subject to abuse. (Martinez TR 3282) BST's witness Scheye says that applications for access are handled on a first-come, first-served basis. (TR 421) This procedure has not been tested in Florida because no applications for access have been filed by the ALECS. The procedures for providing access to cable companies have been in effect for years. (Milner TR 775) Staff does not believe that the lack of specific time frames for access and processing applications is sufficient reason to deny this checklist item. BST witness Milner states that if make-ready work is not required, an ALEC can access the conduit or make the pole attachment immediately. (EXH 33, p.95) Staff also believes that time frames for providing the ALEC's requested access depend on the complexity of the request and the availability of the requested access. The time frame could vary substantially.

AT&T's position on this issue states that BellSouth has not provided such access to AT&T and cannot demonstrate compliance with this checklist item until methods and procedures have been tested and implemented and it actually provides such access to competitors. (TR 2656) Staff believes that the last phrase in this statement goes beyond the requirements of the Act. BST cannot actually provide access to ALECs until the ALECs apply for access. Based on BST witness Milner's answers to staff's deposition questions, no actual applications for access have been received. Only availability inquiries have been received, and that BST has responded to all of these inquiries. (EXH 33, p.95) AT&T also says in its position on this issue that BST has not provided such access to AT&T. AT&T has not requested any such access. (Hamman TR 2744)

BellSouth's position is that it has met this checklist item. BST's witness Scheye says that access to poles, ducts, conduits, and rights-of-way are provided to any ALEC by way of a standard agreement (TR 419-21) and to the date of the hearing, 13 ALECs in Florida had executed license agreements with BST to allow them to attach their facilities to BST poles and place their facilities in BST ducts and conduits. (TR 775) BST also states that the

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functional availability has been proven by the fact that BellSouth has provided access to IXC's, cable television companies and power companies for years. (TR 775) BST witness Scheye says that BST offers this access in Section III of the SGAT via a standard license agreement. (TR 419-21) He also states that the pole attachment rate is \$4.20 per pole per year, and the conduit occupancy rate is \$0.56 per foot per year. These prices were developed in accordance with FCC accounting rules that were designed by the FCC to produce cost-based rates. (TR 419-21) These prices were not challenged by any party.

#### SUMMARY

Staff agrees with BellSouth's position that it has met this checklist item. The testimony cited above, together with the fact that § 224 has been in effect since 1978 prescribing conditions for utilities to provide access to poles and conduit to cable television companies, proves BST's ability to provide access when requested. The Act just modified § 224 so that it applied to telecommunication carriers as well as cable companies. Therefore, staff believes that the Commission should approve the recommendation stated above.

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ISSUE 5: Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC. (Audu)

RECOMMENDATION: No. Based on the evidence in the record, BellSouth has not provisioned all of the unbundled local loops requested by the ALECs. BellSouth has experienced significant billing related problems (among others) in providing these unbundled local loops.

#### POSITION OF THE PARTIES

ACSI: No, and ACSI has encountered difficulties obtaining unbundled loops in other BellSouth states.

AT&T: No. The testimony of other carriers in Georgia and Louisiana reveals that the methods and procedures for a CLEC desiring to provide customers with local loops clearly are not in place, nor have they been tested to ensure that service changes will happen in a nondiscriminatory time frame. BellSouth's systems are the same throughout the region; there is no reason to expect that BellSouth has capabilities in Florida that it does not have in other states.

BST: Yes. Unbundled local loop transmission is functionally available from BellSouth. BellSouth has implemented procedures for the ordering, provisioning, and maintenance of unbundled loops and sub-loops. As of July 1, 1997, BellSouth has provisioned 1,085 unbundled loops to ALECs in Florida.

FCCA: No. It is clear from the testimony of individual carriers that BellSouth has not fully implemented the provisioning of unbundled loops.

FCTA: No. BellSouth has not met its burden of demonstrating compliance with the Act or FCC rules. See, e.g. evidence presented in Hearing Exhibit No. 86, attachment A.

ICI: No. BellSouth has not provided Intermedia with access to requested certain unbundled network elements and thus not provided Intermedia with unbundled loop transmission. In particular, BellSouth has not provided Intermedia with unbundled digitally conditioned loops and unbundled subloops in conformity with Section 271(c)(2)(B)(iv) of the 1996 Act.

MCI: No. BellSouth has not fully implemented the provisioning of unbundled loops. BellSouth's current OSS do not support unbundled



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local loops for competitors on a parity with BellSouth. Limited experience to date shows that BellSouth is not provisioning local loops to competitors in a time frame that is at parity with itself.

MFS/WorldCom: No. BellSouth has not yet provided unbundled local loop transmission due to continued provisioning and conversion problems. In addition, the unbundled loop prices do not meet the requirements of the Act.

Sprint: No. BellSouth has failed to provide any cost studies to support the reasonableness of their prices for their unbundled local loops transmission network elements. While the FCC order did not specify what subelements of local loop transmission should be unbundled, the order did encourage states to pursue unbundling the local loop into subelements and stated that the FCC would pursue unbundling the local loop into sub elements in 1997. Prices should be cost-based. There should be no restrictions on how local loop transmission can be used.

TCG: No. BellSouth has not met its burden of affirmatively demonstrating that it has unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC.

STAFF ANALYSIS:

INTERPRETATION OF THE ACT'S REQUIREMENTS

SECTION 271 REQUIREMENTS

Section 271(c)(2)(B) requires that [a]ccess or interconnection provided or generally offered by a Bell operating company (BOC) to other telecommunications carriers meets the requirements of this subparagraph if such access or interconnection meets the 14 point checklist items. Checklist item 4 requires the unbundling of the "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." (§ 271(c)(2)(B)(iv)) In addition, §251(c)(3) requires that the BOC shall provide the requesting carriers with nondiscriminatory access to the requested network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory as per this section and section 252. The incumbent local exchange company (ILEC) is further required to provide such unbundled network elements in a manner that allows requesting carriers to combine such elements

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in order to provide such telecommunications service. Finally, §252(d)(1) requires that the rates for network elements shall be based on the cost of providing the network element, be nondiscriminatory, and may include a reasonable profit.

#### FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

##### First Report and Order

In its First Report and Order, the FCC defines unbundled elements "[a]s physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. Carriers requesting access to unbundled elements within the ILEC's network seek in effect to purchase the right to obtain exclusive access to an entire element, or some feature, function or capability of that element." (EXH 1, FCC 96-325, ¶258) The FCC concludes that the broad definition of "network element" includes all facilities or equipment utilized in the provisioning of a telecommunication service, "[a]nd all features, functions, and capabilities that are provided by means of such facility or equipment, . . . , and information sufficient for billing and collection, . . . , or other provision of a telecommunication service". This definition includes, but was not limited to, transport, call-related databases, software used in such databases, and other unbundled elements. This definition further includes information that the ILECs use to commercially provide telecommunication services such as information required for pre-ordering, ordering, provisioning, billing, and maintenance and repair services. (EXH 1, FCC 96-325, ¶262)

The FCC explains "access" to an unbundled network element means that the ILEC "[m]ust provide the facility or functionality of a particular element to requesting carriers, separate from the facility or functionality of other elements." (EXH 1, FCC 96-325, ¶268) The FCC explains that this "access" can be construed as the means by which requesting carriers obtain the element's functionality in order to provide a telecommunication service. (EXH 1, FCC 96-325, ¶269)

Furthermore, the FCC notes that new entrants would be denied a meaningful opportunity to compete if the quality of the access, as well as the quality of the elements themselves, were lower than what the ILECs provides to themselves. Thus, the FCC concludes that the phrase "nondiscriminatory access" in §251(c)(3) should be construed to mean at least two things: first, the quality of, as well as, the access to an unbundled network element (UNE) that an ILEC provides must be equal between ALECs requesting access to such element; second, at technically

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feasible points, the access and the UNE provided must be at least equal-in-quality to that which the ILEC enjoys. (EXH 1, FCC 96-325, ¶312)

Finally, the FCC concludes that ILECs must provide local loops on an unbundled basis to requesting carriers, since this provision will facilitate market entry and improve consumer welfare. In addition, the FCC states that in the absence of unbundled local loops, the risk and cost of entry will be increased. (EXH 1, FCC 96-325, ¶378)

#### Ameritech Order

In the Ameritech Order, the FCC indicated that Ameritech must be able to deploy the necessary OSS functions that allow competing carriers to order network elements and combinations of network elements and receive the associated billing information. In addition, the FCC indicated that in its application, Ameritech relied on internal testing as evidence that its OSS functions for the ordering, provisioning and billing of combinations of network elements were operationally ready. (EXH 1, FCC 97-298, ¶160) The order states

We would expect Ameritech to demonstrate, at a minimum, that both individual and combinations of network elements can be ordered, provisioned, and billed in an efficient, accurate, and timely manner, .... (EXH 1, FCC 97-298, ¶161)

Furthermore, the FCC recognizes that ALECs requesting UNES or resale services must rely on the ILECs for billing and usage information to serve its customers and effectively compete; thus, it important that the ILECs provide the ALECs timely and accurate information. (EXH 1, FCC 97-298, ¶221)

The FCC notes that Ameritech's pricing of its switched transport access at tariffed rates does meet its obligation to provide shared transport as an unbundled network element. (EXH 1, FCC 97-298, ¶316) Furthermore, the FCC concluded that any carrier that provides exchange access service over its requested network elements is entitled to collect access charges associated with those network elements. (EXH 1, FCC 97-298, ¶317)

#### FCC Rules

The FCC rules require that the ILECs provide nondiscriminatory access to network elements to any requesting

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telecommunications carriers on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251 and 252. In addition, the ILEC shall provide a requesting carrier access to an UNE, along with all of the UNE's features, functions, and capabilities, in a manner that allows the requesting carrier to provide any telecommunications service that can be offered by means of that network service. (47 C.F.R. §51.307 a & c)

#### FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In Order No. PSC-96-1579-FOF-TP, the Commission determined that BellSouth shall provide access to unbundled loops including loops that are served by integrated and non-integrated digital loop carrier technology. (Order No. PSC-96-1579-FOF-TP, p.13) The Commission determined that BellSouth should provide telecommunications services for UNEs at the same level of quality that it provides to itself and its affiliates. (Order No. PSC-96-1579-FOF-TP, p.74) Also, the Commission required BellSouth to provide CABS-formatted billing for both resale services and UNEs, since this will provide the ALECs bills in a familiar format. (Order No. PSC-96-1579-FOF-TP, p.96) In making this determination, the Commission agreed with the Act's nondiscriminatory requirement.

#### SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

This checklist item calls for the unbundling of the local loop from local transport and other services. Staff will focus on BellSouth's ability to provision the local loop as a distinct entity. One of the ways to make this determination is through BellSouth's ability to provision and bill for the local loop as a separate unbundled network element. While the local loop may not generally be ordered individually, for the purpose of this checklist item; staff will evaluate such orders as though the unbundled local loops were ordered singularly.

#### STAFF DISCUSSION OF POSITIONS

Checklist item iv requires BellSouth to unbundle the local loop transmission from local transport and local switching. This checklist item does not seek to address whether BellSouth provides nondiscriminatory access to unbundled local loops; instead, it seeks to address whether BellSouth provisions local loop transmission unbundled from local transport and local switching. In addition, staff does not address any of the relevant OSS functions required to provision this checklist item,

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or any pricing issues that bear on this checklist item. Both OSS functions and pricing related issues are addressed in checklist item ii (Issue 3).

BellSouth argues that it has provisioned unbundled local loop transmission to all requesting carriers. In order for staff to establish that BellSouth has provisioned the local loop unbundled from local transport and local switching, it is necessary that BellSouth proves its ability to bill for the local loop as a separate unbundled network element.

Paragraph 380 of the FCC's First Report and Order on Interconnection (EXH 1, FCC 96-325) defines "unbundled local loop" as a

transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes a number of loop types, such as two-wire and four-wire analog voice-grade loops, two-wire and four-wire loops that are conditioned to transmit digital signaling, ...

#### WHAT HAS BEEN REQUESTED

Based on the record, a number of the intervenors have requested unbundled local loops and subloop elements either for testing or for commercial orders. From AT&T's interrogatory response, AT&T has ordered local loops and NIDs for test locations. (EXH 95) Similarly, Intermedia indicates that it placed orders for 4-wire digital loops, DS-1 loops, 2-wire analog loops, and ISDN loops in anticipation of using these to provide Frame Relay Services. (EXH 79) Furthermore, MCI indicates that it ordered unbundled local loops for test trials and one for commercial purposes. (EXH 111) Sprint Metropolitan Network testifies that it has ordered unbundled local loops. (EXH 89, p.16) Finally, TCG indicates that it has ordered high capacity unbundled service out of a collocation arrangement. (EXH 122)

#### WHAT HAS BELL SOUTH PROVIDED

According to the intervenors, BellSouth has provided only a portion of their requested unbundled local loops. There is no evidence to precisely ascertain what type and how many local loops have been provisioned to the ALECs. The intervenors that have ordered these local loops have raised several concerns regarding BellSouth's ability to bill for these loops. While BellSouth has provided unbundled local loops to ICI, ICI contends

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that there is still a portion of its order BellSouth has yet to provide. (TR 2277)

BellSouth witness Milner asserts that BellSouth has offered functionally available unbundled local loop transmission. BellSouth contends that it has unbundled the local loop transmission from local switching or other services. (Milner TR 777) Witness Milner further asserts that BellSouth has technical service descriptions outlining available unbundled loops and sub-loop elements. BellSouth contends that it has implemented procedures for the ordering, provisioning, and maintenance of unbundled loops and sub-loops. In addition, BellSouth asserts that it has provisioned 1,085 unbundled loops to competing carriers in Florida. (Milner TR 777-778) Witness Milner asserts that BellSouth has verified the availability of unbundled local loop transmission to ALECs. During verification of these loops, witness Milner contends that orders for these loops were generated and flowed through BellSouth's operational system in a timely and accurate manner. He further contends that billing records were generated and reviewed for accuracy. (Milner TR 778) BellSouth offers several loop types to any requesting ALEC, and where a loop type is not offered in its SGAT, BellSouth has established a Bona Fide Request process whereby such an additional loop can be obtained. (Scheye TR 422) Witness Scheye argues that BellSouth has fully implemented checklist item iv because BellSouth either has provided or is capable of providing the unbundled local loop transmission upon request. (Scheye TR 422, 427)

In its SGAT, BellSouth states that it provides access to unbundled local loop and sub-loop elements. BellSouth provides a variety of local loop configurations, such as 2-wire and 4-wire voice grade analog, 2-wire ADSL, 2-wire and 4-wire HDSL, 2-wire ISDN, and 4-wire DS-1 digital grade. The sub-loop components include loop distribution media, loop cross-connects, loop concentration systems and the network interface device. (EXH 24, pp. 10-11)

Several intervenors assert that BellSouth has not met its obligation to provide nondiscriminatory local loop transmission unbundled from local transport, or other services. ICI witness Strow contends that BellSouth has not provided ICI with the access it has requested to certain unbundled network elements. Thus, BellSouth has not provided ICI with unbundled local loop transmission. (TR 2385) ICI witness Strow asserts that some orders for unbundled local loops (ULL) have still not been provided. Witness Strow argues that in ICI's interconnection agreement, it requested unbundled frame relay network components

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(in the form of loops and sub-loops elements). Specifically, witness Strow asserts that ICI has requested 4-wire digitally-conditioned loops. Witness Strow contends that despite several repeated correspondence to BellSouth expressing ICI's need for these loops and sub-loops elements, these elements have still not been provided. BellSouth responded by letter on September, 10, 1996, stating that it could provide the requested loops. (EXH 76) However, witness Strow testifies that BellSouth later informed ICI that sub-loop elements could not be provisioned because the LFACS and the TIRKS line and trunk assignment databases could not handle such data. In another instance, the ICI witness asserts that BellSouth informed ICI that the CABS billing system is not able to bill for unbundled local loops, and that BellSouth has not reconfigured its CRIS system to bill for ULLs either. (TR 2377-2378; 2438)

ICI's witness Strow contends that of the unbundled local loops provisioned, BellSouth has not been able to bill for these unbundled local loops on an unbundled basis. Instead, BellSouth has billed these unbundled local loops at tariffed rates, and applied credits as per its interconnection agreement with ICI, thereby giving the appearance of UNEs. (TR 2380) The ICI witness argues that in another instance, BellSouth has provisioned Synchronet service as a surrogate for some requested UNEs that BellSouth could not provision. She argues that in this arrangement, ICI has been disadvantaged by the pricing of the Synchronet service since BellSouth is arguing that this provisioning is equal to a resale service and not an UNE. (TR 2460; EXH 76)

Sprint's witness Closz argues that Sprint has experienced service-affecting problems as BellSouth struggled to provision the requested unbundled local loops. Witness Closz contends that while BellSouth continues to address these operational problems, the underlying deficiencies have not been corrected. The Sprint witness contends that Sprint customers have been taken out of service because BellSouth was unable to stop disconnect orders when associated cut-overs were delayed. In other instances, witness Closz asserts that BellSouth has delayed notifying Sprint of facilities related problems regarding a customer's move to another location. In a particular case, she argues that this delayed notice caused 12 out of 14 of the customer's lines to be out of service for two days at the new location. (TR 2577) Witness Closz asserts that on occasions, cut-overs have been incomplete due to BellSouth's limited network capacity. (TR 2558; EXH 88) In addition, Sprint asserts that BellSouth's application of the wholesale discount has been problematic. She asserts that BellSouth has continuously misapplied rate elements. (TR 2576)

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WorldCom has no experience in Florida; however, WorldCom's witness Ball contends that it has experienced similar scheduling cut-over problems in Georgia. (Ball TR 3396, 3378-3379) WorldCom argues that BellSouth has not provided unbundled local loop transmission due to these continued provisioning and conversion problems. (Ball TR 3377, 3397) Similarly, ACSI's witness Falvey asserts that three of its business customers were without service for several hours. As clients called these numbers, they received recordings that stated that the numbers were no longer in service. Witness Falvey contends that each day of delay to install a customer's ULL jeopardizes the competing carrier's ability to retain that customer. He argues that BellSouth's failure to process ALECs' orders by agreed upon due dates gives BellSouth the chance to retain that customer. (Falvey TR 2263-2264)

MCI's witness Martinez contends that MCI ordered an unbundled loop and a switch port which BellSouth provided, however, BellSouth billed these services as resale service. Thus, witness Martinez argues that MCI is not sure of what BellSouth has provisioned. The witness states that "[I] know what we ordered, and that was the loop and the port. But when the bill came in, it was billed as a resale." (Martinez TR 3354) In addition, MCI's witness Gulino contends that BellSouth provisions unbundled local loops at longer installation intervals than it provides to itself, and thereby limiting the ALECs' reasonable opportunity to compete. He asserts that if a new customer initiating service has to wait for several days, this is sufficient reason for the customer to change his mind about signing up with an ALEC. In addition, MCI contends that BellSouth has not fully implemented the provisioning of unbundled loops, since BellSouth's OSS does not support unbundled local loops on a nondiscriminatory basis. (Gulino TR 3126, 3140-3141)

AT&T witness Bradbury asserts that BellSouth's systems in other states reveal that there are no methods and procedures to ensure that service changes will be implemented in nondiscriminatory time frames. Since BellSouth's systems are region-wide, there is no reason to expect that BellSouth has different capabilities in Florida than it has in other states in its region. (Bradbury TR 2943)

Staff acknowledges ICI's assertion that BellSouth has provisioned ICI with tariffed services that are in-turn priced at UNE negotiated prices, thus, appearing as properly provisioned UNEs. Also, Sprint alludes to a problem whereby BellSouth has continuously misapplied the UNE rates to its bills. Staff notes that BellSouth has neither confirmed nor refuted these



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assertions. Staff also notes that BellSouth would have you believe that its unbundled local loops are functionally available and that some have been provisioned in the state of Florida. (TR 777) However, the FCC concluded in the Ameritech Order that pricing UNES at tariffed rates does not meet the BOC's obligation to provide network elements as unbundled network elements. (EXH 1, FCC 97-298, ¶316)

Staff agrees with ICI that BellSouth has not conclusively determined whether it can bill for UNES using the CABS billing system or some other alternative. BellSouth witness Scheye testified that the loops and ports in Exhibit 27 were billed using the CRIS billing system. Witness Scheye also indicated that BellSouth has acquired the capability for mechanized billing for all UNES except operator and directory assistance services. (EXH 31) Staff notes that Exhibit 31 was filed with this Commission on September 3, 1997. This information was provided during the pendency of this application with this Commission. However, BellSouth provided no evidence to support this claim. Without actual billing statements to demonstrate this capability, staff believes that it is impossible to conclude that BellSouth has the capability to generate mechanized billing statements for usage sensitive UNES.

Staff notes MCI's assertion that BellSouth provisions unbundled loops at longer intervals than it provides to itself, however, there is no empirical data to support or disprove this argument. Staff agrees with MCI that such long provisioning intervals limit the ALECs' reasonable opportunity to compete in the local market. Again, until such time that BellSouth can provide performance data on its operations and those of competing carriers, the ALECs allegedly will be subjected to a lesser quality of service than BellSouth.

In addition, staff notes Sprint, WorldCom, and ACSI's assertions of persisting cut-over problems. While Sprint's experiences are Florida based, WorldCom's experienced similar problems in other BellSouth service region. Staff notes that BellSouth's witness Milner testified that BellSouth's systems are region-wide.

In some cases a given resold service or unbundled network element is not in service in Florida, ... Availability in Florida, though, is evidenced by BellSouth's providing the resold service or unbundled network element in any of the nine states in its region. This is because BellSouth uses the same processes in Florida as in the other states in

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BellSouth's nine-state region to respond to requests from ALECs for resold services, unbundled network element, and interconnection arrangements. (Milner TR 842)

#### SUMMARY

The FCC concluded that the broad definition of "network element" includes among other things, information sufficient for billing and collection. In addition, the FCC noted that new entrants would be denied a meaningful opportunity to compete if the quality of the access, as well as the quality of the elements themselves, were lower than what the ILECs provided to themselves. Thus, the FCC concluded that the phrase "nondiscriminatory access" should be construed to mean at least the UNEs provided to ALECs must be at least equal-in-quality to that which the ILEC enjoys. Finally, the FCC concluded that ILECs must provide local loops on an unbundled basis to requesting carriers, since this provision will facilitate market entry, and that in the absence of unbundled local loops, the risk and cost of entry will be increased.

In the Ameritech Order, the FCC indicated that ALECs requesting UNEs or resale services must rely on the ILECs for billing and usage information to serve its customers and effectively compete; thus, it is important that the ILECs provide the ALECs timely and accurate information. Also, pricing UNEs at tariffed rates does not meet the BOC's obligation to provide this checklist item as an unbundled network element.

ICI asserts that a portion of its orders for unbundled local loops have still not been provided even after 14 months of a pending request. Whereby BellSouth has provided requested loops, BellSouth has provided these loops at tariffed rates. Further, Sprint contends that while BellSouth continues to address the operational problems pertaining to customers' cut-overs, the underlying deficiencies have not been corrected. Sprint asserts that on occasions, cut-overs have been incomplete due to BellSouth's limited network capacity. In addition, MCI states that BellSouth provisions unbundled local loops at longer installation intervals than it provides to itself, and asserts that the long provisioning intervals limit the ALECs' reasonable opportunity to compete.

In Order No PSC-96-1579-FOF-TP, the Commission required BellSouth to provide telecommunications services to ALECs at the same quality as it provides to itself and to provide the ALECs CABS formatted billing.

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#### RECOMMENDATION

Staff believes that BellSouth's provisioning of unbundled local loops at tariffed rates and then applying necessary credits to give the appearance of UNEs pricing is in violation of the Act's requirement for this checklist item. Staff notes that BellSouth has problems with billing of unbundled loops, such as billing for UNEs as unbundled elements and at the specified UNE rates. BellSouth's ability to bill for the unbundled local loop as an unbundled element and at the specified UNE rate is critical in making an affirmative determination as to BellSouth's compliance to checklist item iv. Specifically, this Commission ordered BellSouth to bill for UNEs using a CABS-formatted billing at minimum. BellSouth did not conclusively say it could bill for UNEs using the CABS billing system, or provide the billing in CABS-format. (EXH 31) In the instances whereby BellSouth provided bills, the ALECs expressed dissatisfaction and the fact that the elements were not billed as UNEs. Therefore, staff is unable to ascertain that BellSouth has unbundled the local loop from other services. Hence, BellSouth is not in compliance with checklist item iv.

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ISSUE 6: Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC? (Audu)

RECOMMENDATION: No. Based on the evidence in the record, BellSouth has not provisioned all of the unbundled local transport requested by the ALECs. BellSouth has experienced significant billing related problems in the provisioning of these unbundled local transport requested.

POSITION OF THE PARTIES

ACSI: No.

AT&T: No. BellSouth has provided common transport for IXC's but CLECs cannot utilize without additional work by BellSouth. Further, BellSouth has not put in place the methods and procedures that provide certainty that common transport can be provided between end offices and billed on a nondiscriminatory basis. For example, in Florida, AT&T ordered four test loop combinations but cannot confirm receipt of shared transport or how BellSouth will render a usage sensitive bill for this shared transport. Therefore, BellSouth cannot claim that it has met the Act's requirement to provide unbundled local transport.

BST: Yes. Local transport is functionally available from BellSouth. BellSouth has technical service descriptions outlining dedicated and common interoffice transport and has procedures in place for the ordering, provisioning, and maintenance of these services. As of June 1, 1997, BellSouth has 277 dedicated trunks providing interoffice transport to ALECs in Florida.

FCCA: No. The testimony of individual carriers demonstrates that BellSouth has not actually provisioned unbundled local transport in Florida in compliance with the Act and applicable rules.

FCTA: No position.

ICI: No. BellSouth has not provided Intermedia with access to requested UNEs and, as a result, BellSouth has not provided Intermedia with unbundled local transport in a usable manner consistent with Section 271(c)(2)(B)(v).

MCI: No. BellSouth has not fully implemented the provisioning of unbundled local transport. BellSouth's current OSS do not support unbundled local transport for competitors on a parity with

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BellSouth. BellSouth does not offer the trunk ports and tandem ports which are needed to fully unbundle local transport from local switching. BellSouth also does not permit interLATA, intraLATA and local traffic to be combined on multi-jurisdictional trunks.

MFS/WorldCom: No. BellSouth has not yet provided unbundled local transport as required by the Act and applicable rules.

Sprint: No. Local transport provides transmission from the trunk side of a switch to any other point. Local transport does not include switching. Tandem switching should be unbundled from transmission. Prices should be cost-based. There should be no restrictions on how local transport can be used. BellSouth has not met the requirements of this provision of the checklist.

TCG: No. BellSouth has not met its burden of affirmatively demonstrating that it has unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC.

STAFF ANALYSIS:

INTERPRETATION OF THE ACT'S REQUIREMENTS

SECTION 271 REQUIREMENTS

Section 271 and Section 251 of the Telecommunications Act of 1996 require that BOCs provide unbundled network elements to all requesting competing carriers, and that these network elements, as well as the accompanying access, shall be provided on a nondiscriminatory basis. The Act addressed unbundled local transport as an unbundled network element, hence, the Act's requirements that pertain to this checklist item will be addressed in Issue 5.

FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

The FCC First Report and Order, the Ameritech Order and the FCC Rules which implement the Act, provide guidance to the requirements of unbundled network elements. Unbundled local transport is addressed as an unbundled network element, therefore staff will address the FCC interpretation of Section 271 as it pertains to unbundled local transport in Issue 5.

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#### FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In Order No. PSC-96-1579-FOF-TP, the Commission determined that BellSouth should provide telecommunications services for UNEs at the same level of quality that it provides to itself and its affiliates. (Order No. PSC-96-1579-FOF-TP, p.74) Also, the Commission required BellSouth to provide CABS-formatted billing for both resale services and UNEs, since this will provide the ALECs bills in a familiar format. (Order No. PSC-96-1579-FOF-TP, p.96) In making this determination, the Commission agreed with the Act's nondiscriminatory requirement.

#### SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

Since this checklist item calls for the unbundling of the local transport from local switching and other services, staff will focus on BellSouth's ability to provision the local transport as a distinct entity. One of the ways to make this determination is through BellSouth's ability to provision and bill for the local transport as a separate unbundled network element. While local transport may not generally be ordered individually, for the purpose of this checklist item staff will evaluate such orders as though the unbundled local transport were ordered singularly.

#### STAFF DISCUSSION OF POSITIONS

Checklist item v requires BellSouth to unbundle the local transport on the trunk side of a wire line from switching or other services. This checklist item does not seek to address whether BellSouth provisions nondiscriminatory access to unbundled local transport instead, it seeks to address whether BellSouth provides local transport that is unbundled from the local loop, local switching, or other services. BellSouth testifies that it has provisioned unbundled local transport to all requesting carriers. In order to determine whether BellSouth has provisioned local transport unbundled from local switching or other services, it is necessary for BellSouth to provide documentation demonstrating that BellSouth provisions and bills for unbundled local transport as a separate unbundled network element.

Paragraph 440 of the FCC First Report and Order on Interconnection (EXH 1, FCC 96-325) defines unbundled local transport to include shared and dedicated transmission facilities between end offices and the tandem switch, and central offices, or between such offices and those of competing carriers.

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#### WHAT HAS BEEN REQUESTED

AT&T indicates that it has ordered local transport as part of its Concept Testing. (EXH 95) Intermedia has also requested unbundled local transport per its Interconnection Agreement. Intermedia contends that BellSouth has not provided the unbundled local transport in a usable manner. However, Intermedia asserts that it has no direct experience in ordering unbundled local transport. (Strow BR 60) In addition, MCI indicates that it has requested dedicated transport. (EXH 111) Finally, Sprint states that it requested local transport pursuant to its interconnection agreement. However, Sprint asserts that it has not ordered unbundled local transport. (EXH 90)

#### WHAT HAS BELL SOUTH PROVIDED

It is unclear how many unbundled local transport requests BellSouth has received. It is unclear from the record what BellSouth has provisioned and to whom. Thus, staff cannot state with any certainty the actual level of activity.

BellSouth's witness Milner testifies that BellSouth has provisioned 277 dedicated trunks for interoffice transport to requesting ALECs in Florida. Witness Milner argues that since unbundled interoffice transport is very similar to the interoffice transport component of special access services, which BellSouth has experience in provisioning, BellSouth did not test to verify the condition of the local transport components. However, witness Milner asserts that test orders for dedicated transport and channelization flowed through and were billed accurately. (TR 780)

In addition, BellSouth contends that it offers unbundled local transport in Section V of its SGAT. The unbundled transport includes optional channelization for local transport from the trunk side, dedicated and common transport including DS0, DS1 channels in conjunction with multiplexing or concentration and DS1 or DS3 transport. BellSouth also offers tandem switching. In its SGAT, BellSouth asserts that it offers its common transport on a usage sensitive basis. (Milner TR 779; EXH 24, p.11)

MCI's witness Martinez contends that BellSouth has not unbundled its local transport, since BellSouth purports to charge for local transport on a minute of use basis. Witness Martinez argues that in order to demonstrate that common transport is unbundled in compliance with the Act, both the port and the trunk have to be priced at flat rates. Witness Martinez contends that

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the only way to measure the usage on a minute-of-use basis would be to provision local transport in conjunction with the port. He further contends that to measure this usage on a minute-of-use basis is to utilize the measurement capability of the switch; thus, BellSouth must be provisioning common transport in combination with switching. (TR 3283, 3285) In addition, witness Martinez argues that BellSouth does not offer the trunk side local switching element. He contends that without a trunk side local switching network element, BellSouth cannot possibly connect the common transport element to the switch. Witness Martinez then infers that BellSouth must not be offering common transport. (TR 3290)

In addition, MCI's witness Gulino argues that BellSouth has not offered common transport in the most efficient way for competition to develop in the local market. He contends that this is implied in BellSouth's refusal to provide for multi-jurisdictional trunk transmission. Witness Gulino argues that from an engineering standpoint it is very important to have this flexibility to carry any type of traffic on the same trunk. He argues that such flexibility eliminates inefficient duplication of trunks. However, witness Gulino concedes that multi-jurisdictional trunking is not provided in MCI's agreement with BellSouth. (Gulino TR 3142-3143) In addition, ACSI's witness Falvey argues that ACSI has not ordered unbundled local transport in Florida; however, ACSI has experienced critical transport failure in Kentucky and Alabama. (Falvey TR 2289)

AT&T's witness Hamman contends that BellSouth has not put in place the necessary protocols to ensure that common transport can be provided and billed on a nondiscriminatory basis. Witness Hamman asserts that to date, BellSouth has not provided confirmation to AT&T regarding the UNE platform that AT&T ordered in Florida. AT&T argues that it has not received the shared transport it ordered, since BellSouth has not billed for this usage sensitive element. AT&T argues that since BellSouth has not billed for shared transport, it is uncertain if BellSouth has actually provided shared transport, and hence, has not provisioned local transport. (Hamman TR 2664)

Furthermore, AT&T argues that BellSouth cannot claim compliance with checklist item on the basis of BellSouth's past experience in providing access transport to IXCs. AT&T argues that providing transport for interLATA and toll is not synonymous to providing unbundled local transport for local exchange service. (TR 2663) AT&T further contends that BellSouth is unwilling to allow AT&T to take advantage of its existing dedicated transport facilities to provide local service. AT&T



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argues that this group of customers already has access to AT&T's network via dedicated transport; thus, AT&T believes that BellSouth should allow AT&T to use these facilities to provide local service to this group of customers. (TR 2663)

Staff notes AT&T's argument that BellSouth has not put in place the necessary protocols to ensure that local transport can be provisioned and billed in compliance with this checklist item. Staff notes that BellSouth has neither confirmed nor refuted AT&T's assertions. Staff notes that BellSouth argues that its unbundled local transport is functionally available and that some have been provisioned in the state of Florida. (TR 780)

Staff agrees with BellSouth that unbundled local transport (ULT) is similar to the interoffice transport component of special access, notwithstanding, these two components are very distinctive in application. Staff believes that while BellSouth may draw from its prior experience in providing interoffice transport for special access, this in and of itself does not suffice as proof that BellSouth can provision ULT in the local market. Staff agrees with AT&T that BellSouth cannot depend on this prior experience to establish compliance with this checklist item.

Further, it is possible that during testing BellSouth could generate billing associated with the test. This does not prove that BellSouth can provide and bill for ALECs in a commercial usage environment. Staff agrees with AT&T that the required proof of BellSouth's capability to provision ULT is to bill for it as ordered. This act of billing for the UNE as ordered goes to corroborate BellSouth's claim of provisioning capability.

Staff disagrees with MCI that BellSouth has not unbundled local transport because of the application of usage sensitive charges. Both the FCC and this Commission have determined that common transport will be billed on a minute of use basis because of its very nature. (Order No. PSC-96-1579-FOF-TP, p.114)

#### SUMMARY

BellSouth argues that since unbundled interoffice transport is very similar to the interoffice transport component of special access services which BellSouth has experience in provisioning to IXCs, therefore, BellSouth did not have to test and verify the conditions of unbundled local transport. However, AT&T argues that despite the fact BellSouth has provided common transport for IXCs, ALECs cannot utilize these facilities without modifications.